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1999 N.C. SESSION LAWS 357

GENERAL ASSEMBLY OF NORTH CAROLINA
RATIFIED BILL

NORTH CAROLINA SESSION OF 1999

CHAPTER 357
SENATE BILL 247

1999 N.C. ALS 357; 1999 N.C. Sess. Laws 357; 1999 N.C. Ch. 357; 1999 N.C. SB 247

SYNOPSIS: AN ACT TO WITHDRAW NORTH CAROLINA FROM THE SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT, TO LIMIT THE AUTHORITY OF THE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY AND TO DIRECT THE RADIATION PROTECTION COMMISSION TO STUDY AND FORMULATE A PLAN FOR LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT.

The General Assembly of North Carolina enacts:

[*1] Section 1. In accordance with the provisions of G.S. 104F-1, Article VII, Section (g) of the General Statutes, North Carolina hereby withdraws from membership as a party state in the Southeast Interstate Low-Level Radioactive Waste Management Compact.

[*2] Section 2. Chapter 104F of the General Statutes is repealed.

[*3] Section 3. Notwithstanding any provision of Chapter 104G of the General Statutes to the contrary, the sole function of the North Carolina Low-Level Radioactive Waste Management Authority shall be to take all necessary actions to complete the process of closure and restoration of the proposed Wake County low-level radioactive waste site, and to finalize all other responsibilities and business of the Authority relating to closure and restoration on or before June 30, 2000.

[*4] Section 4. Chapter 104G of the General Statutes is repealed effective July 1, 2000.

[*5] Section 5. The North Carolina Radiation Protection Commission is directed to review and study the current and projected availability and adequacy of facilities for the management of low-level radioactive waste produced by North Carolina generators, and to formulate a recommended plan for complying with North Carolina's responsibilities under the Low-Level Radioactive Waste Policy Act of 1980, Pub. L. No. 96-573, 94 Stat. 3347, and the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99-240,99 Stat. 1842, *42 U.S.C. 202* lb, et seq. The Commission shall report its findings and recommendations to the General Assembly on or before May 15, 2000. No license application for a low-level radioactive waste facility shall be issued or considered by the Department of Environment and Natural Resources prior to

action by the General Assembly establishing a plan for future management of low-level radioactive waste.

[*6] Section 6. Sections 1, 2, 3, 5, and 6 of this act are effective when they become law. Section 4 of this act becomes effective July 1, 2000.

HISTORY:
In the General Assembly read three times and ratified this the 20th day of July, 1999.

Signed by the Governor July 26, 1999.

SPONSOR: Lee

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N.C. GEN. STAT. § 104F-1 (REPEALED EFFECTIVE JULY 22, 1999)

§ 104F-1. Compact entered into; form of Compact

The Southeast Interstate Low-Level Radioactive Waste Management Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Southeast Interstate Low-Level Radioactive Waste Management Compact

ARTICLE I. Policy and purpose

There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Compact. The party states recognize and declare that each state is responsible for providing for the availability of capacity either within or outside the state for disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. They also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis. The party states further recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (P.L. 96-573), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for disposal of such waste. The party states recognize that the safe and efficient management of low-level radioactive waste generated within

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the region requires that sufficient capacity to dispose of such waste be properly provided.

It is the policy of the party states to: enter into a regional low-level radioactive waste management compact for the purpose of providing the instrument and framework for a cooperative effort, provide sufficient facilities for the proper management of low-level radioactive waste generated in the region, promote the health and safety of the region, limit the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region, encourage the reduction of the amounts of low-level waste generated in the region, distribute the costs, benefits and obligations of successful low-level radioactive waste management equitably among the party states, and ensure the ecological management of low-level radioactive wastes.

Implicit in the congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

1. Expeditious enforcement of federal rules, regulations and laws; and

2. Imposition of sanctions against those found to be in violation of federal rules, regulations and laws; and

3. Timely inspection of their licensees to determine their capability to adhere to such rules, regulations and laws; and

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4. Timely provision of technical assistance to this compact in carrying out their obligations under the Low-Level Radioactive Waste Policy Act, as amended.

ARTICLE II. Definitions

As used in this compact, unless the context clearly requires a different construction:

(a) "Commission" or "Compact Commission" means the Southeast Interstate Low-Level Radioactive Waste Management Commission.

(b) "Facility" means a parcel of land, together with the structures, equipment and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage or disposal of low-level radioactive waste.

(c) "Generator" means any person who produces or possesses low-level radioactive waste in the course of or as an incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity. This does not include persons who provide a service to generators by arranging for the collection, transportation, storage or disposal of wastes with respect to such waste generated outside the region.

(d) "High-level waste" means irradiated reactor fuel, liquid wastes from reprocessing irradiated reactor fuel and solids into which such liquid wastes have been converted, and other high-

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level radioactive waste as defined by the U.S. Nuclear Regulatory Commission.

(e) "Host state" means any state in which a regional facility is situated or is being developed.

(f) "Low-level radioactive waste" or "waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or by-product material as defined in section 11e.(2) of the Atomic Energy Act of 1954, or as may be further defined by federal law or regulation.

(g) "Party state" means any state which is a signatory party to this compact.

(h) "Person" means any individual, corporation, business enterprise or other legal entity (either public or private).

(i) "Region" means the collective party states.

(j) "Regional facility" means (1) a facility as defined in this Article which has been designated, authorized, accepted or approved by the Commission to receive waste or (2) the disposal facility in Barnwell County, South Carolina, owned by the State of South Carolina and as licensed for the burial of low-level radioactive waste on July 1, 1982, but in no event shall this disposal facility serve as a regional facility beyond December 31, 1992.

(k) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

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(*l*) "Transuranic wastes" means waste material containing transuranic elements with contamination levels as determined by the regulations of (1) the U.S. Nuclear Regulatory Commission or (2) any host state, if it is an agreement state under section 274 of the Atomic Energy Act of 1954.

(m) "Waste management" means the storage, treatment or disposal of waste.

ARTICLE III. Rights and obligations

The rights granted to the party states by this compact are additional to the rights enjoyed by sovereign states, and nothing in this compact shall be construed to infringe upon, limit or abridge those rights.

(a) Subject to any license issued by the U.S. Nuclear Regulatory Commission or a host state each party state shall have the right to have all wastes generated within the borders stored, treated, or disposed of, as applicable at regional facilities, and additionally shall have the right of access to facilities made available to the region through agreements entered into by the Commission pursuant to Article IV (e)(9). The right of access by a generator within a party state to any regional facility is limited by its adherence to applicable state and federal law and regulation.

(b) If no operating regional facility is located within the borders of a party state and the waste generated within its borders must therefore be stored, treated, or disposed of at a

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regional facility in another party state, the party state without such facilities may be required by the host state or states to establish a mechanism which provides compensation for access to the regional facility according to terms and conditions established by the host states and approved by a two-thirds vote of the Commission.

(c) Each party state shall establish the capability to regulate, license and ensure the maintenance and extended care of any facility within its borders. Host states are responsible for the availability, the subsequent post closure observation and maintenance, and the extended institutional control of their regional facilities, in accordance with the provisions of Article V, section (b).

(d) Each party state shall establish the capability to enforce any applicable federal or state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders.

(e) Each party state shall provide to the Commission on an annual basis, any data and information necessary to the implementation of the Commission's responsibilities. Each party state shall establish the capability to obtain any data and information necessary to meet its obligation herein defined.

(f) Each party state shall, to the extent authorized by federal law, require generators within its borders to use the best available waste management technologies and practices to minimize the volumes of wastes requiring disposal.

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ARTICLE IV. The Commission

(a) There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Commission, ("the Commission" or "Compact Commission"). The Commission shall consist of two voting members from each party state to be appointed according to the laws of each state. The appointing authorities of each state must notify the Commission in writing of the identity of its members and any alternates. An alternate may act on behalf of the member only in the member's absence.

(b) Each Commission member shall be entitled to one vote. No action of the Commission shall be binding unless a majority of the total membership cast their vote in the affirmative, or unless a greater than majority vote is specifically required by any other provision of this compact.

(c) The Commission shall elect from among its members a presiding officer. The Commission shall adopt and publish, in convenient form, by-laws which are consistent with this compact.

(d) The Commission shall meet at least once a year and shall also meet upon the call of the presiding officer, by petition of a majority of the party states, or upon the call of a host state. All meetings of the Commission shall be open to the public.

(e) The Commission has the following duties and powers:

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(1) To receive and approve the application of a nonparty state to become an eligible state in accordance with Article VII (b), and

(2) To receive and approve the application of an eligible state to become a party state in accordance with Article VII (c); and

(3) To submit an annual report and other communications to the governors and to the presiding officer of each body of the legislature of the party states regarding the activities of the Commission; and

(4) To develop and use procedures for determining, consistent with considerations for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region; and

(5) To provide the party states with reference guidelines for establishing the criteria and procedures for evaluating alternative locations for emergency or permanent regional facilities; and

(6) To develop and adopt within one year after the Commission is constituted as provided for in Article VII, section (d), procedures and criteria for identifying a party state as a host state for a regional facility as determined pursuant to the requirements of this Article. In accordance with these procedures and criteria, the Commission shall identify a host

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state for the development of a second regional disposal facility within three years after the Commission is constituted as provided for in Article VII, section (d) and shall seek to ensure that such facility is licensed and ready to operate as soon as required but in no event later than 1991.

In developing criteria, the Commission must consider the following: the health, safety, and welfare of the citizens of the party states; the existence of regional facilities within each party state; the minimization of waste transportation; the volumes and types of wastes generated within each party state; and the environmental, economic and ecological impacts on the air, land, and water resources of the party states.

The Commission shall conduct such hearings; require such reports, studies, evidence and testimony; and do what is required by its approved procedures in order to identify a party state as a host state for a needed facility; and

(7) In accordance with the procedures and criteria developed pursuant to section (e)(6) of this Article, to designate, by a two-thirds vote, a host state for the establishment of a needed regional facility. The Commission shall not exercise this authority unless the party states have failed to voluntarily pursue the development of such facility. The Commission shall have the authority to revoke the membership of a party state that willfully creates barriers to the siting of a needed regional facility; and

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(8) To require of and obtain from party states, eligible states seeking to become party states, and non-party states seeking to become eligible states, data and information necessary to the implementation of Commission responsibilities; and

(9) Notwithstanding any other provision of this compact, to enter into agreements with any person, state, or similar regional body or group of states for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. Such authorization to import requires a two-thirds majority vote of the Commission, including an affirmative vote of both representatives of the host state in which any affected regional facility is located. This shall be done only after an assessment of the affected facilities' capability to handle such wastes; and

(10) To act or appear on behalf of any party state or states, only upon written request of both members of the Commission for such state or states, as an intervenor or party in interest before Congress, state legislatures, any court of law, or federal, state or local agency, board or commission which has jurisdiction over the management of wastes. The authority to act, intervene or otherwise appear shall be exercised by the Commission only after approval by a majority vote of the Commission; and

(11) To revoke the membership of a party state in accordance with Article VII (f).

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(f) The Commission may establish such advisory committees as it deems necessary for the purpose of advising the Commission on any and all matters pertaining to the management of low-level radioactive waste.

(g) The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure irrespective of the civil service, personnel or other merit laws of any of the party states or the federal government and shall be compensated from funds of the Commission. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out such functions as may be assigned to it by the Commission. If the Commission has a headquarters it shall be in a party state.

(h) Funding for the Commission shall be provided as follows:

(1) Each eligible state, upon becoming a party state, shall pay twenty-five thousand dollars ($25,000) to the Commission which shall be used for costs of the Commission's services.

(2) Each state hosting a regional disposal facility shall annually levy special fees or surcharges on all users of such facility, based upon the volume of wastes disposed of at such facilities, the total of which:

a. Shall be sufficient to cover the annual budget of the Commission; and

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b. Shall represent the financial commitments of all party states to the Commission; and

c. Shall be paid to the Commission, provided, however, that each host state collecting such fees or surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budgets of the Commission.

(3) The Commission shall set and approve its first annual budget as soon as practicable after its initial meeting. Host states for disposal facilities shall begin imposition of the special fees and surcharges provided for in this section as soon as practicable after becoming party states, and shall remit to the Commission funds resulting from collection of such special fees and surcharges within 60 days of their receipt.

(i) The Commission shall keep accurate accounts of all receipts and disbursements. An independent certified public accountant shall annually audit all receipts and disbursements of Commission funds, and submit an audit report to the Commission. Such audit report shall be made a part of the annual report of the Commission required by Article IV (e)(3).

(j) The Commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person,

firm or corporation, and may receive, utilize and dispose of the same. The nature, amount and condition, if any, attendant upon any donation or grant accepted pursuant to this paragraph together with the identity of the donor, grantor or lendor, shall be detailed in the annual report of the Commission.

(k) The Commission shall not be responsible for any costs associated with (1) the creation of any facility, (2) the operation of any facility, (3) the stabilization and closure of any facility, (4) the post-closure observation, and maintenance of any facility, or (5) the extended institutional control, after post-closure observation and maintenance of any facility.

(*l*) As of January 1, 1986, the management of wastes at regional facilities is restricted to wastes generated within the region, and to wastes generated within non-party states when authorized by the Commission pursuant to the provisions of this compact. After January 1, 1986, the Commission may prohibit the exportation of waste from the region for the purposes of management.

(m) (1) The Commission herein established is a legal entity separate and distinct from the party states, capable of acting in its own behalf, and shall be so liable for its actions. Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for action taken by them in their official capacity.

(2) Except as specifically provided in this compact, nothing in this compact shall be construed to alter the incidence

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of liability of any kind for any act, omission, course of conduct, or on account of any causal or other relationships. Generators, transporters of wastes, owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

ARTICLE V. Development and operation of facilities

(a) Any party state which becomes a host state in which a regional facility is operated, shall not be designated by the Compact Commission as a host state for an additional regional facility until each party state has fulfilled its obligation, as determined by the Commission, to have a regional facility operated within its borders.

(b) A host state desiring to close a regional facility located within its borders may do so only after notifying the Commission in writing of its intention to do so and the reasons therefor. Such notification shall be given to the Commission at least four years prior to the intended date of closure. Notwithstanding the four year notice requirement herein provided, a host state is not prevented from closing its facility or establishing conditions of use and operations as necessary for the protection of the health and safety of its citizens. A host state may terminate or limit access to its regional facility if it determines Congress has materially altered the conditions of this compact.

(c) Each party state designated as a host state for a regional facility shall take appropriate steps to ensure that an application

for a license to construct and operate a facility of the designated type is filed with and issued by the appropriate authority.

(d) No party state shall have any form of arbitrary prohibition on the treatment, storage or disposal of low-level radioactive waste within its borders.

(e) No party state shall be required to operate a regional facility for longer than a 20-year period, or to dispose of more than 32,000,000 cubic feet of low-level radioactive waste, whichever first occurs.

ARTICLE VI. Other laws and regulations

(a) Nothing in this compact shall be construed to:

(1) Abrogate or limit the applicability of any act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress;

(2) Abrogate or limit the regulatory responsibility and authority of the U.S. Nuclear Regulatory Commission or of an agreement state under section 274 of the Atomic Energy Act of 1954 in which a regional facility is located;

(3) Make inapplicable to any person or circumstance any other law of a party state which is not inconsistent with this compact;

(4) Make unlawful the continued development and operation of any facility already licensed for development or operation on the date this compact becomes effective, except

that any such facility shall comply with Article III, Article IV and Article V and shall be subject to any action lawfully taken pursuant thereto;

(5) Prohibit any storage or treatment of waste by the generator on its own premises;

(6) Affect any judicial or administrative proceeding pending on the effective date of this compact;

(7) Alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions;

(8) Affect the generation, treatment, storage or disposal of waste generated by the atomic energy defense activities of the Secretary of the U.S. Department of Energy or federal research and development activities as defined in P.L. 96-573;

(9) Affect the rights and powers of any party state and its political subdivisions to regulate and license any facility within its borders or to affect the rights and powers of any party state and its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.

(b) No party state shall pass any law or adopt any regulation which is inconsistent with this compact. To do so may jeopardize the membership status of the party state.

(c) Upon formation of the compact no law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more inconvenient

access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

(d) Restrictions of waste management of regional facilities pursuant to Article IV(1) shall be enforceable as a matter of state law.

ARTICLE VII. Eligible parties, withdrawal, revocation, entry into force, termination

(a) This compact shall have as initially eligible parties the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

(b) Any state not expressly declared eligible to become a party state to this compact in section (a) of this Article may petition the Commission, once constituted, to be declared eligible. The Commission may establish such conditions as it deems necessary and appropriate to be met by a state wishing to become eligible to become a party state to this compact pursuant to the provisions of this section. Upon satisfactorily meeting such conditions and upon the affirmative vote of two-thirds of the Commission, including the affirmative vote of both representatives of a host state in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this compact and may become a party state in the same manner as those states declared eligible in section (a) of this Article.

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(c) Each state eligible to become a party state to this compact is declared a party state upon enactment of this compact into law by that state and upon payment of the fees required by Article IV (h)(1). The Commission shall be the judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this compact and the laws of the party states relating to the enactment of this compact.

(d) (1) The first three states eligible to become party states to this compact which enact this compact into law and appropriate the fees required by Article IV (h)(1) shall immediately, upon the appointment of their Commission members, constitute themselves as the Southeast Low-Level Radioactive Waste Management Commission, shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall do those things necessary to organize the Commission and implement the provisions of this compact.

(2) All succeeding states eligible to become party states to this compact shall be declared party states pursuant to the provisions of section (c) of this Article.

(3) The consent of the Congress shall be required for full implementation of this compact. The provisions of Article V, section (d) shall not become effective until the effective date of the import ban authorized by Article IV, section (*l*) as

approved by Congress. The Congress may by law withdraw its consent only every five years.

(e) No state which holds membership in any other regional compact for the management of low-level radioactive waste may be considered by the Compact Commission for eligible state status or party state status.

(f) Any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the Commission, including suspension of its rights under this compact and revocation of its status as a party state. Any sanction shall be imposed only on the affirmative vote of at least two-thirds of the Commission members. Revocation of party state status may take effect on the date of the meeting at which the Commission approves the resolution imposing such sanction, but in no event shall revocation take effect later than 90 days from the date of such meeting. Rights and obligations incurred by being declared a party state to this compact shall continue until the effective date of the sanction imposed or as provided in the resolution of the Commission imposing the sanction.

The Commission shall, as soon as practicable after the meeting at which a resolution revoking status as a party state is approved, provide written notice of the action along with a copy of the resolution to the governors, the Presidents of the Senates, and the Speakers of the Houses of Representatives of

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the party states, as well as chairmen of the appropriate committees of the Congress.

(g) Subject to the provisions of Article VII section (h), any party state may withdraw from this compact by enacting a law repealing the compact, provided that if a regional facility is located within such state, such regional facility shall remain available to the region for four years after the date the Commission receives verification in writing from the Governor of such party state of the rescission of the compact. The Commission, upon receipt of the notification, shall as soon as practicable provide copies of such notification to the governors, the Presidents of the Senates, and the Speakers of the Houses of Representatives of the party states as well as the chairmen of the appropriate committees of the Congress.

(h) The right of a party state to withdraw pursuant to Article VII section (g) shall terminate thirty days following the commencement of operation of the second host state disposal facility. Thereafter a party state may withdraw only with the unanimous approval of the Commission and with the consent of Congress. For purposes of this section, the low-level radioactive waste disposal facility located in Barnwell County, South Carolina shall be considered the first host state disposal facility.

(i) This compact may be terminated only by the affirmative action of the Congress or by the rescission of all laws enacting the compact in each party state.

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ARTICLE VIII. Penalties

(a) Each party state, consistently with its own law, shall prescribe and enforce penalties against any person not an official of another state for violation of any provision of this compact.

(b) Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws and regulations can result in imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

ARTICLE IX. Severability and construction

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provisions of this compact shall be liberally construed to give effect to the purposes thereof.

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HISTORY: 1983. c. 714, s. 1; 1987, c. 850, s. 25.

NOTES:

APRIL 8, 1996 LETTER TO RICHARD S. HODES, M.D. FROM GOVERNOR JAMES B. HUNT, JR.

April 8, 1996

Richard S. Hodes, M.D., Chairman
Southeast Compact Commission For Low-Level
Radioactive Waste Management
21 Glenwood Avenue, Suite 207
Raleigh, NC 27603

Dear Dr. Hodes:

Thank you for your January 5, 1996, letter regarding future Southeast Compact funding of North Carolina's low-level radioactive waste (LLRW) disposal facility siting effort. While North Carolina has funded almost 30 percent of the project costs to date, the Southeast Compact has appropriately funded the major portion of our site development efforts. Accordingly, the potential interruption of Southeast Compact funding described in your letter is a matter of great concern.

You express understandable concern about the cost overruns and delays that we have experienced with the project. I share those concerns. In my view, they are attributable primarily to two factors. First, the North Carolina LLRW Management Authority (on the recommendation of its contractor Chem-Nuclear) selected a geologically complex site that has not proved easy to characterize and understand. It

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remains unclear whether this site can be modeled and monitored with reasonable assurance, although the authority and its contractors continue to work to resolve those questions. Second, it has now been recognized by the Authority and its independent consultant, Harding Lawson Associations, that there were significant problems and shortcomings in the Chem-Nuclear license application that must be reworked and addressed. Toward that end, changes were made last year in Chem-Nuclear's management of the project and Harding Lawson Associates has been involved on an ongoing basis in designing a work plan to carry the project forward.

The conflicting reports from the Division of Radiation Protection (DRP) and the Authority which you reference pertain to the adequacy of the work plan proposed by the Authority in January and the likelihood that such a work plan will lead to a favorable licensing decision. Based on the reports I have received from recent meetings of our Inter-Agency Committee on LLRW, I am convinced that additional work needs to be done on this work plan.

At my direction the Authority and DRP have been engaged in a series of intensive meetings designed to produce a revised work plan which both agencies believe is realistic. This revised work plan will put us in a better position to provide the Compact Commission with a reasonable estimate of the time and costs that will be involved in getting to a licensing decision

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as well as, with some intermediate decision points at which the project should be reevaluated in the event of unfavorable outcomes. However, because of the uncertainty of the outcome of the work that remains to be done, it will continue to be difficult, if not impossible, to forecast the likely outcome of this plan to work.

I appreciate your expression of the Commission's continuing support for our site development efforts. Please be assured that North Carolina remains committed to fulfilling its obligations under the Southeast Compact and will continue to work diligently toward that end. However, when the revised work plan is completed, it will be necessary and appropriate for the Compact Commission to decide whether it will provide continued funding for this project.

Based on your letter it appears that the prospects for future funding of the North Carolina siting efforts are not good. First, you indicate that the Compact Commission has conditioned any future funding on a financial investment in the project by Chem-Nuclear. My understanding is that Chem-Nuclear has declined to make such an investment. Second, you suggest that the Compact Commission will be unable to fund the completion of the project and that North Carolina will need to make "alternate plans" to fund the completion the project. It is highly unlikely that the North Carolina General Assembly would assume a greater portion or the financial responsibility

APRIL 8, 1996 LETTER TO RICHARD S. HODES, M.D. FROM GOVERNOR JAMES B. HUNT, JR.

for the project than it has done to date, and I would not recommend that it do so. If that means that the future of the project is in jeopardy, then I suggest the Compact Commission move immediately to determine how best to address this problem.

My warmest personal regards.

Sincerely

/s/ James B. Hunt, Jr.

JBH:caw
cc: Rep. George W. Miller, Jr.
Capt. William Briner
Warren Corgan
John MacMillan
Steve Levitas
Dayne Brown

DECEMBER 1, 1997 LETTER TO WARREN G. CORGAN FROM RICHARD S. HODES, M.D.

December 1, 1997

Mr. Warren G. Corgan, Chairman
North Carolina Low-Level Radioactive Waste Management Authority
116 West Jones Street, Suite 2109
Raleigh, NC 27603-8003

Dear Warren:

I am in receipt of your letter of November 25 in which you relay the views of the Authority with regard to the draft Memorandum of Understanding (MOU). Since the letter neither discloses an agreement in principle with the MOU nor offers an alternative funding mechanism with the appropriate concurrences, it fails to meet the Commission's requirements for future funding expressed in the resolutions of the Commission dated August 21, 1997 and November 7, 1997. Accordingly, I cannot authorize the release of funds for work beyond November 30 nor would it be appropriate to convene a meeting of the Commission to consider the Authority's response at this time.

The Commission remains dedicated to work with the Authority and waste generators to develop a plan to share the cost for site development in North Carolina. We will meet at any time with